IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3857 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHARJIBHAI P SOLANKI - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

NOTICE SERVED for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2 - 3.
MR SUNIL K SHAH for Respondent(s) : 4,
MR AJ PATEL for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/10/2005

ORAL JUDGMENT

1. In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Additional Chief Secretary (Appeals) Revenue Department, State of Gujarat dtd.14/11/1990 in Revision Application No.-SRD-1 of 1990 in quashing and setting aside the order passed by the Deputy Secretary (L&D) No.11 dtd.4/12/1984 as well as the order passed by the Collector, Panchmahals dtd.29/11/1989.

2. It appears from the record that though served, nobody appears on behalf of the and therefore, this Court has no other alternative but to decide and dispose of the present petition on merits ex-parte on the basis of the material available on record.

3. The dispute is with regard to the land bearing Survey No.381 and 404, situated in Village Nindka (East), Taluka Santrampur (hereinafter referred to as "the land in question" for convenience). An order came to be passed by the Deputy Collector (L&D No.11), Dahod on 4/12/1984 regularising the transaction in favour of the petitioner and the respondent No.4 under sec.73(AA) of the Bombay Land Revenue Code. Being aggrieved and dissatisfied with the said order, the respondent No.5 herein who claims to have purchased the land in question much prior to the purchase of the transaction between the petitioner and the respondent No.4, preferred Appeal No.13 of 1989 before the Collector, Panchmahals and the Collector, by his order dtd.29/11/1989 allowed the said appeal by quashing and setting aside the order passed by the Dy. Collector (L&D-11), Dahod dtd.4/12/1984 and remanded the matter to the Dy. Collector for passing an order afresh. As the petitioner was of

the opinion that the said order was passed without giving an opportunity of being heard to him and on the other grounds also, he preferred the revision application before the Addl. Chief Secretary (Appeals), Revenue Department,State of Gujarat being Revision Application No.1 of 1990 and the Addl. Chief Secretary by his judgement and order dtd.14/11/1990 though in the operative portion of the order has held that the revision application is allowed, but in fact quashed and set aside not only the order passed by the Collector, Panchmahals dtd.29/11/1989 which was remanding the matter to the Deputy Collector but also quashed and set aside the first order passed by the Dy.Collector (L&D-11), Dahod dtd.4/12/1984 by which the transaction between the petitioner and the respondent No.4 was regularized. Being aggrieved and dissatisfied with the judgement and order passed by the Addl. Chief Secretary (Appeals), Revenue Department, State of Gujarat dtd.14/11/1990 in Revision Application No.SRD-1

of 1990, the petitioner has preferred the present petition under Articles 226 and 227 of the Constitution of India.

4. It appears from the pleadings in the petition, more particularly considering para 7 that it is the contention of petitioner that the order passed by the Collector in quashing and setting aside the order passed by the Dy.Collector dtd.4/11/2004 is in breach of the principle of natural justice and was passed without giving an opportunity to the petitioner and according to him, in fact, no Summons or Notice has been served upon him. It appears that the other submissions on merits have also been made. Mr.Shital Patel learned advocate appearing on behalf of the respondent No.5 has submitted that the Collector, Panchmahals in its order dtd.6/11/1990 has struck the balance and has remanded the matter to the Dy.Collector and has passed the order directing to pass an appropriate

order afresh, after hearing all the concerned parties. He has also further submitted that in fact, the respondent No.5 has purchased the very land in question from the respondent No.4 much prior to the transaction between the petitioner and the respondent No.4 and therefore, when the transaction in favour of the petitioner and the respondent No.4 came to be regularized, the same was also in breach of the principle of natural justice, as the respondent NO.5 was also not heard. He has also tried to make number of submissions on merits. He has also relied upon the Affidavit-in-reply filed on behalf of the respondent NO.5. However , in view of the fact that the assertion on the part of the petitioner more particularly in para 7 of the petition that the Collector, Panchmahals passed the order dtd.6/1/1990 without giving an opportunity of being heard to the petitioner and that no summons and/or notice was served upon the petitioner, has not been controverted by any of the respondents,

the impugned order passed by the Collector is required to be quashed and set aside and the matter is required to be remanded to the Collector, Panchmahals for passing an appropriate order afresh in accordance with law and on merits, after hearing all the concerned parties and therefore, this Court has not considered the the submissions made o behalf of the respondent No.5 on the merits of the matter.

5. It is also required to be noted tha the learned advocate appearing on behalf of the respondent nO.5 has submitted that the Collector has remanded the matter to the Dy.Collector for passing appropriate order afresh, in accordance with law and after giving an opportunity to all the concerned parties and therefore, the Collector tried to struck the balance. However, it is required to be noted that even the very order passed by the Collector Panchmahals, by which the matter was remanded to the

Dy.Collector, has been quashed and set aside by the Chief Secretary (Appeals) and therefore, even the said order is also not in existence.

6. In view of the fact that the order passed by the Collector, Panchmahals dtd.6/11/1990, by which the Collector, set aside the order passed by the Deputy Collector (L&D-11), Dahod dtd.6/12/1984, which was in favour of the petitioner, has been passed without giving opportunity of being heard to the petitioner and the same is in breach of the principle of natural justice, the same requires to be quashed and set aside and the matter is required to be remanded to the Collector by passing an appropriate order afresh. Consequently, the order passed by the Addl.Chief Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application No.-SRD-1 of 1990 dtd.14/11/1990 is also required to be quashed and set aside.

7. For the reasons stated hereinabove, the petition succeeds in part. The order passed by the Collector, Panchmahals dtd.29/11/1989 as well as the judgement and order passed by the Addl.Chief Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application No.-SRD-1 of 1990 dtd.14/11/1990, are hereby quashed and set aside and the matter is remanded to the Collector, Panchmahals for passing appropriate order afresh in accordance with law and on merits, after giving an opportunity of being heard to parties concerned.

However, it is made clear that this Court has not expressed any opinion on the merits of the matter. It is also required to be noted that it is the contention of the petitioner that he is in possession of the land in question and even otherwise in view of the fact that while admitting the present petition, this Court has passed the order directing the parties to

maintain status-quo, on remand the parties are directed to maintain status-quo.

9. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R. SHAH,J.)

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